

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSEPH PAUL GUARNERI,

Plaintiff,

v.

**9:09-CV-695
(FJS/ATB)**

**JOHN BATES, JR., Schoharie County Sheriff;
BIALKAWSKI, Schoharie County Sheriff
Sergeant; BARTHOLOMEW, Schoharie
County Jail Sergeant; NELSON, Schoharie
County Jail Sergeant; NEWMAN, Lieutenant
of Schoharie County Jail; GORDON, Schoharie
County Jail Deputy; SERGEANT SHAW,
Schoharie County Jail Deputy; VANBUREN,
Schoharie County Jail Deputy; and
LAWRENCE TRAVIS, Cobleskill
Police Department Sergeant,**

Defendants.

APPEARANCES

OF COUNSEL

JOSEPH PAUL GUARNERI
Middleburgh, New York 12122
Plaintiff *pro se*

LEMIRE JOHNSON, LLC
2534 Route 9
P.O. Box 2485
Malta, New York 12020

**GREGG T. JOHNSON, ESQ.
MARK J. LEMIRE, ESQ.**

SCULLIN, Senior Judge

ORDER

On July 23, 2010, Defendants filed a motion to dismiss for lack of prosecution. *See* Dkt. No. 11. Defendants' affidavit of service that accompanied their motion indicates that Defendants served Plaintiff at the address he provided to the Court in his letter dated August 10, 2009. *See*

Dkt. Nos. 7, 12.

On August 24, 2010, Magistrate Judge Homer issued an Order reminding Plaintiff that he had not responded to Defendants' motion to dismiss and granting him an extension until September 28, 2010, to file his opposition papers. *See* Dkt. No. 15. In addition, Magistrate Judge Homer warned Plaintiff that, if he did not file a response by that date, the court would assume that he did not oppose Defendants' motion to dismiss and that his failure to respond might "result in the termination of the case in favor of the defendants, in which instance there [would] be no trial." *See id.* The Court served Plaintiff by certified mail at the address that he had provided to the Court. *See id.* The Order was not returned to the Court as undeliverable; and, to date, Plaintiff has not contacted either the Court or Defendants' counsel.

Currently before the Court is Magistrate Judge Baxter's January 12, 2011 Report-Recommendation, in which he recommended that this Court grant Defendants' motion and dismiss this case with prejudice in its entirety for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *See* Dkt. No. 17 at 5. The parties have not filed any objections to this recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's January 12, 2011 Report-

Recommendation for clear error and manifest injustice; and, having found none, the Court hereby

ORDERS that Magistrate Judge Baxter's January 12, 2011 Report-Recommendation is
ACCEPTED in its entirety for the reasons stated therein; and the Court further

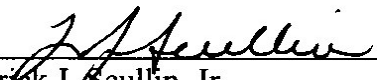
ORDERS that this case is **DISMISSED with prejudice in its entirety for failure to prosecute** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: February 4, 2011
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge